

2013 Assembly Bill 61 (LRB -0138)

An Act to create 125.07 (3) (a) 15., 125.07 (4) (bg) and 125.07 (4) (f) of the statutes; relating to: alcohol beverages violations involving underage persons on licensed premises.

2013

03-07.	A.	Introduced by Representatives Jacque, Kleefisch, Bies, August, Born, Endsley, Kaufert, Kuglitsch, Knodl, LeMahieu, Petersen, Ripp, Schraa, Spiros, Swearingen and Tittl ; cosponsored by Senators Gudex, Kedzie and Moulton.	79
03-07.	A.	Read first time and referred to Committee on State Affairs	80
04-18.	A.	Public hearing held	
04-19.	A.	Representative Ohnstad added as a coauthor	128
04-23.	A.	Assembly Amendment 1 offered by Representatives Jacque and Kahl (LRB a0311)	129
04-23.	A.	Assembly Amendment 2 offered by Representatives Jacque and Kahl (LRB a0312)	129
04-30.	A.	Executive action taken	
05-02.	A.	Report Assembly Amendment 1 adoption recommended by Committee on State Affairs, Ayes 9, Noes 0	139
05-02.	A.	Report Assembly Amendment 2 adoption recommended by Committee on State Affairs, Ayes 9, Noes 0	139
05-02.	A.	Report passage as amended recommended by Committee on State Affairs, Ayes 9, Noes 0	139
05-02.	A.	Referred to Committee on Rules	139
05-08.	A.	Placed on calendar 5-14-2013 by Committee on Rules	
05-14.	A.	Read a second time	169
05-14.	A.	Assembly Amendment 1 adopted	169
05-14.	A.	Assembly Amendment 2 adopted	169
05-14.	A.	Ordered to a third reading	169
05-14.	A.	Rules suspended	169
05-14.	A.	Read a third time and passed	169
05-14.	A.	Representative Vruwink added as a coauthor	169
05-14.	A.	Ordered immediately messaged	169
05-15.	S.	Received from Assembly	228
05-16.	S.	Read first time and referred to committee on Judiciary and Labor	230
08-08.	S.	Withdrawn from committee on Judiciary and Labor and rereferred to committee on Agriculture, Small Business, and Tourism pursuant to Senate Rule 46(2)(c)	333
09-12.	S.	Public hearing held	
10-09.	S.	Report concurrence recommended by Committee on Agriculture, Small Business, and Tourism, Ayes 8, Noes 1	400
10-09.	S.	Available for scheduling	
10-14.	S.	Placed on calendar 10-15-2013 pursuant to Senate Rule 18(1)	414
10-15.	S.	Senate Amendment 1 offered by Senators Hansen, Carpenter, T. Cullen, Lehman, C. Larson and Miller (LRB a1019)	
10-15.	S.	Read a second time	
10-15.	S.	Senate Amendment 1 laid on table, Ayes 18, Noes 15	
10-15.	S.	Ordered to a third reading	
10-15.	S.	Rules suspended	
10-15.	S.	Read a third time and concurred in	
10-15.	S.	Ordered immediately messaged	
10-16.	A.	Received from Senate concurred in	

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ADOPTED DOCUMENTS:

☒ Orig ☐ Engr ☐ SubAmdt

13-0138/1

Amendments to above (if none, write "NONE"):

AA1 — a0311/1
AA2 — a0312/1

Corrections – show date (if none, write "NONE"):

None

Topic

Rel

10-17-13

Date

J. Phil

Enrolling Drafter



State of Wisconsin
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LRB-0138/1

ARG:kjf:rs

2013 ASSEMBLY BILL 61

March 7, 2013 – Introduced by Representatives JACQUE, KLEEFISCH, BIES, AUGUST, BORN, ENDSLEY, KAUFERT, KUGLITSCH, KNODL, LEMAHIEU, PETERSEN, RIPP, SCHRAA, SPIROS, SWEARINGEN and TITTL, cosponsored by Senators GUDEx, KEDZIE and MOULTON. Referred to Committee on State Affairs.

1 **AN ACT** *to create* 125.07 (3) (a) 15., 125.07 (4) (bg) and 125.07 (4) (f) of the
2 statutes; **relating to:** alcohol beverages violations involving underage persons
3 on licensed premises.

Analysis by the Legislative Reference Bureau

Under current law, an alcohol beverages licensee (retailer) may not procure for, sell, or otherwise provide alcohol beverages to a person who has not attained the legal drinking age of 21 and who is not accompanied by his or her parent, guardian, or spouse who is at least age 21 (unaccompanied underage person) or, with various exceptions, permit an unaccompanied underage person to enter or be on a retail licensed premises (retailer underage violation). A retailer has a defense to a retailer underage violation if the retailer shows that: 1) the underage person falsely represented his or her age to be at least 21; 2) the appearance of the underage person was such that an ordinary and prudent person would believe that the underage person was at least 21; 3) the retailer acted in good faith and in reliance on the representation and appearance of the underage person in the belief that the underage person was at least 21; and 4) the underage person supported his or her representation with identification showing his or her age to be at least 21.

Also under current law, an unaccompanied underage person may not: 1) procure or attempt to procure alcohol beverages from a retailer; 2) possess or consume alcohol beverages on licensed retail premises; 3) enter or be on licensed retail premises, subject to various exceptions; or 4) falsely represent his or her age to obtain alcohol beverages from a retailer (underage violation). A person who

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commits an underage violation is subject to various penalties, including a forfeiture ranging in amount from \$250 to \$1,000 depending on the number of prior underage violations the person has committed.

This bill provides retailers with a private right of action against underage persons who commit underage violations. Under the bill, a retailer may bring a civil action against an underage person who commits an underage violation on the retailer's licensed premises if the retailer has not been convicted of or cited for a retailer underage violation related to the same incident giving rise to the underage violation, unless the retailer has a defense to the retailer underage violation. If a retailer brings a civil action against an underage person based on the underage violation and judgment is entered in favor of the retailer, the court must award to the retailer damages in the amount of \$1,000, plus costs and reasonable attorney fees. However, if the underage person is less than 18 years of age and not emancipated, the retailer brings the action against the parent or legal guardian of the underage person instead. The retailer has the burden of proving that the underage person's conduct constituted an underage violation, but the action may be brought regardless of whether the underage person received a citation for, or was convicted of, the underage violation. Before a retailer may bring an action, the retailer must provide notice of its intent to bring an action and the notice must include a demand for the monetary relief that would be available if the action were brought.

The bill also creates an exception allowing an unaccompanied underage person to enter or be on licensed retail premises if the underage person is employed by or assisting a law enforcement agency in enforcing or investigating underage violations or retailer underage violations. The bill also specifies that laws relating to underage violations, and prohibiting an unaccompanied underage person from knowingly possessing or consuming alcohol beverages, do not apply to an underage person employed by or assisting a law enforcement agency in enforcing or investigating underage violations or retailer underage violations.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 125.07 (3) (a) 15. of the statutes is created to read:

2 125.07 (3) (a) 15. An underage person employed by or assisting a law
3 enforcement agency in carrying out enforcement activities to determine compliance
4 with, or investigate potential violations of, the provisions of this section.

5 **SECTION 2.** 125.07 (4) (bg) of the statutes is created to read:

6 125.07 (4) (bg) Paragraphs (a) and (b) do not apply to an underage person
7 employed by or assisting a law enforcement agency in carrying out enforcement

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activities to determine compliance with, or investigate potential violations of, the provisions of this section.

SECTION 3. 125.07 (4) (f) of the statutes is created to read:

125.07 (4) (f) 1. Except as provided in subd. 2., and subject to subds. 3. and 4., if an underage person engages in conduct that violates par. (a) on the premises of a licensee, the licensee may bring a civil action against the underage person. If judgment is entered in favor of the licensee, the court shall award to the licensee damages in the amount of \$1,000 and, notwithstanding s. 814.04 (1), the costs of the action, including reasonable attorney fees. A licensee may bring an action under this paragraph regardless of whether the underage person has been convicted of, or received a citation for, the violation of par. (a), but the licensee has the burden of proving, by a preponderance of the evidence, that the underage person's conduct was in violation of par. (a).

2. If the underage person who engages in conduct that violates par. (a) on the licensee's premises is less than 18 years of age and is not an emancipated minor, the licensee may bring the civil action against the underage person's parent, as defined in s. 46.56 (1) (j).

3. A licensee may not bring a civil action under this paragraph unless the licensee has first provided notice to the underage person or the underage person's parent, as applicable, of the licensee's intent to bring the action. The notice shall be mailed to the last-known address of the underage person or underage person's parent, as applicable, at least 15 days prior to filing the action and shall include a demand for the relief described in subd. 1. The department may, by rule, prescribe a form for this notice.

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SECTION 3

4. A licensee may not bring a civil action under this paragraph if the licensee has been convicted of, or received a citation for or been charged with, a violation of sub. (1) or (3) related to the same incident, occurrence, or conduct giving rise to the underage person's violation of par. (a), unless the licensee is entitled to a defense under sub. (6). A licensee that asserts a defense under sub. (6) has the burden of proving the defense by a preponderance of the evidence.

SECTION 4. Initial applicability.

(1) The treatment of section 125.07 (4) (f) of the statutes first applies to violations of section 125.07 (4) (a) of the statutes committed on the effective date of this subsection.

(END)



State of Wisconsin
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LRBa0311/1
ARG:jld:rs

**ASSEMBLY AMENDMENT 1,
TO ASSEMBLY BILL 61**

April 23, 2013 – Offered by Representatives JACQUE and KAHL.

1 At the locations indicated, amend the bill as follows:

2 1. Page 3, line 4: delete “and 4.” and substitute “to 5.”

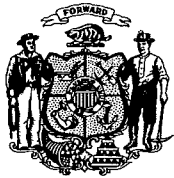
3 2. Page 4, line 6: after that line insert:

4 “5. A licensee may not bring a civil action under this paragraph unless the
5 licensee or the licensee’s employee reports to law enforcement the conduct suspected
6 to be in violation of par. (a) at or near the time that the conduct occurs or is first
7 discovered.”

8 (END)

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State of Wisconsin
2013 - 2014 LEGISLATURE



LRBa0312/1
ARG:jld:rs

**ASSEMBLY AMENDMENT 2,
TO ASSEMBLY BILL 61**

April 23, 2013 – Offered by Representatives JACQUE and KAHL.

1 At the locations indicated, amend the bill as follows:

2 1. Page 3, line 9: delete “action, including reasonable attorney fees.” and
3 substitute “action.”.

4 (END)

AA 2